

## **No vaccine? No job! Court affirms employer's ability to condition employment upon vaccinations**

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On December 7, 2018, the U.S. Eighth Circuit Court of Appeals held that an employee who was terminated for refusing to take a rubella vaccine was not discriminated or retaliated against, under the Americans with Disabilities Act, as amended (“ADA”). [\*See Hustvet v. Allina Health System, Case No. 17-2963.\*](#)

In this case, Janet Hustvet worked as an Independent Living Skills Specialist. In May 2013, Hustvet completed a health assessment, during which she stated she did not know whether she was immunized for rubella. Subsequent testing confirmed she was not. Her employer -- Allina Health Systems -- then told Hustvet she would need to take one dose of the Measles, Mumps, Rubella vaccine (“MMR vaccine”). Hustvet stated to an Allina representative that she was concerned about the MMR vaccine because she had previously had a severe case of mumps and had “many allergies and chemical sensitivities.” Later, Hustvet refused to take the MMR vaccine, and was terminated for failure to comply with Allina’s immunity requirements. Hustvet then sued Allina, alleging discrimination, unlawful inquiry, and retaliation claims under the ADA and Minnesota state law. The district court granted Allina’s motion for summary judgment, and Hustvet appealed.

On appeal, the Eighth Circuit first addressed Hustvet’s unlawful inquiry claim; specifically, Hustvet alleged that Allina violated the ADA when it required her to complete a health screen as a condition of employment. When affirming the district court’s grant of summary judgment, the court explained that the information requested and the medical exam, which tested for immunity to infectious diseases, were related to essential, job related abilities. Indeed, Allina sought to ensure their patient-care providers would not pose a risk of spreading certain diseases – such as rubella – to its client base. Thus, the inquiry was job-related and consistent with business necessity.

The court then did away with Hustvet’s discrimination claim based upon failure to accommodate because Hustvet was not disabled and, thus, she could not state a prima facie case of disability discrimination. There was simply no record evidence to support the conclusion that Hustvet’s purported “chemical sensitivities” or allergies substantially limited any of Hustvet’s major life activities. She was never hospitalized due to an allergic or chemical reaction, never saw an allergy specialist, and was never prescribed an EpiPen. Rather, Hustvet suffered from “garden-variety allergies,” which was not enough to conclude she was disabled.

Finally, the court affirmed the district court's grant of summary judgment regarding Hustvet's retaliation claim. In pertinent part, the court reasoned that Hustvet could not show that Allina's proffered reason for terminating her employment – her refusal to take an MMR vaccine – was a pretext for discrimination. The record evidence demonstrated that Allina terminated Hustvet's employment because her job required her to work with potentially vulnerable patient populations, and she refused to become immunized to rubella, an infectious disease.

This decision comes as welcome news to employers that provide healthcare-related services, and confirms that healthcare providers may condition employment upon taking certain vaccinations, so long as the vaccination is job-related and consistent with business necessity. Employers with questions regarding implementing or enforcing such policies would do well to consult with able counsel.

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